

08/09/2023

Sara Calkins
CLERKMontana Water Court
STATE OF MONTANA

By: D'Ann CIGLER

41K-0230-R-2023

White, Eugene

3.00

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)

* * * * *

CLAIMANT: USA (Department of Agriculture Forest
Service)

CASE 41K-0230-R-2023

41K 56682-00

41K 56683-00

41K 56684-00

41K 56685-00

41K 56686-00

41K 56687-00

41K 56703-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. The above-captioned claims received an issue remark during the DNRC’s review of the claims.

The claims were consolidated into Case 41K-0230-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 56703-00 received the following substantive issue remarks:

AN AMENDMENT WAS SUBMITTED ON 08/13/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Each of the remaining claims received the following substantive issue remark:

AN AMENDMENT WAS SUBMITTED ON 08/12/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. On May 17, 2023, Claimant United States Department of Agriculture, Forest service (“Forest Service”) filed a *Response* which reiterated that the previously filed amendments resolved the issue remarks and brought the claims into historical conformity. The *Response* states that corrections to the flow rates of the claims are necessary to correct decimal errors in the original filings. The *Response* included attachments of the amendments requesting the following modifications to the claims:

41K 56703-00

8. Flow Rate Claimed: 20.0

- ☐ cubic feet per second
☒ gallons per minute
☐ miner's inches

**41K 56682-00, 41K 56683-00, 41K 56684-00, 41K 56685-00, 41K 56686-00,
and 41K 56687-00**

8. Flow Rate Claimed: 5.0

- ☐ cubic feet per second
☒ gallons per minute
☐ miner's inches

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
4. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The proposed modifications contained in the Forest Service’s *Response* and previously filed *Motion to Amend* resolve the issue remarks appearing on the claims. Based on the information contained in the Forest Service’s *Response*, along with the information contained in the attached *Motion to Amend*, the claims should be modified as described in Finding of Fact No. 2. The modifications resolve the issue remarks, and the issue remarks should be removed from the claims.
2. The requested amendments do not have the reasonable potential to adversely affect other water rights as they are corrections to the abstracts which do not make any change to the actual historical use of the claimed right on the ground. Notice by publication of these amendments is not required.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

**Mark J. Widerschein,
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Service via USPS Mail:

(Last Order)

USA (Department of Agriculture Forest Service)
Water Rights Program Manager, Northern Region
26 Fort Missoula Rd
Missoula, MT 59804-7203

Service List Updated: 8/1/2023

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 56682-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: APRIL 23, 1936

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MORTIMER GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSE	33	22N	9W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSE	33	22N	9W	TETON

SECTION 33 IS PROTRACTION BLOCK PB49

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 56683-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: JUNE 20, 1930

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MORTIMER GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESW	33	22N	9W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESW	33	22N	9W	TETON

SECTION 33 IS PROYRACTION BLOCK PB49

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 56684-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 21, 1939

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MORTIMER GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENW	4	21N	9W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENW	4	21N	9W	TETON

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 56685-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: MAY 3, 1947

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: MORTIMER GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	SW	33	22N	9W TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SE	SW	33	22N	9W TETON

SECTION 9N 33 IS PROTRACTION BLOCK PB49

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 56686-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 21, 1939

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MORTIMER GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNE	4	21N	9W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNE	4	21N	9W	TETON

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 56687-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 21, 1939

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MORTIMER GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSE	33	22N	9W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSE	33	22N	9W	TETON

SECTION 33 IS PROTRACTION BLOCK PB49

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 56703-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 1, 1969

Type of Historical Right: USE

Purpose (use): COMMERCIAL

Flow Rate: 20.00 GPM

Volume: 1.00 AC-FT

Source Name: SPRING, UNNAMED TRIBUTARY OF MORTIMER GULCH

Source Type: GROUNDWATER

ALSO KNOWN AS MORTIMER SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENW	4	21N	9W	TETON

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: SPRING BOX

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENW	4	21N	9W	TETON